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Public sector procurement and ethical trade: Governance and social responsibility in some hidden global supply chains

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Abstract

This paper places a critical spotlight on the ways in which governance and social responsibility concerning labour standards work in the context of public sector procurement. Supply chains provisioning the public sector, incorporating a vast array of materials used in public services, such as education, health, social housing and transportation, have been under-researched and under-theorized in the geographical and wider social science literature on Global Production Networks (GPNs), Global Value Chains (GVCs) and consumption ethics. Against this backdrop, the paper evaluates the emergence of ethical trading programmes involving labour standards in UK public sector sourcing, drawing on examples from the health, higher education, construction and transportation sectors and a methodology combining interviews with participant observation. Findings show that ethical public procurement is shaped, and often constrained, by: the relatively low profile of many materials used in public services, which challenge effective campaigning and advocacy work; the consequent limits to reputational risk for state departments and first-tier suppliers if labour issues are encountered in their supply chains; and the significant role of EU and UK procurement law, which until 2014 rendered social responsibility in public sector sourcing a legal risk to specify. Through a practice-orientated approach and adopting the notion of responsabilization inspired by governmentality perspectives, the paper grasps how these challenges for ethical public procurement are encountered and negotiated by procurement managers and those influencing them in a neoliberal environment. It is shown that ethical sourcing is significantly less advanced in the UK public sector than it is in consumer goods sectors, with implications for social justice in a whole realm of under-researched global supply chains.

Keywords

United Kingdom; ethical trade; interviews; public sector; global supply chains; labour standards

Introduction

Supply chains provisioning the public sector, incorporating a vast array of materials used in the delivery of public services from education and health to social housing and transportation, are under-researched and under-theorized in comparison with those for consumer goods sold through brand name retailers and manufacturers. Moreover, ethical aspects of the public sector's supply chains are rarely afforded the kind of academic, civil society and media attention given to labour standards and questions of sustainability in global supply chains associated with the grocery and fashion sectors. And yet, supplies from uniforms and surgical instruments to building materials and road signs used in public services are as central a part of people's everyday lives as consumer goods, and public sector sourcing encompasses vast supply networks that can be just as globally-stretched and in many areas weakly regulated.

This paper demonstrates, using the case of the UK public sector, how ethical trade concerning labour standards appears to be less advanced in the state's supply chains than it is in the sourcing of high-profile consumer goods by brand name companies. We show how there is limited impetus for government departments to address labour issues in their global supply chains when their objectives and reputations are rarely associated with them. When there is no market at stake—a major driver of ethical trade in consumer goods sectors—momentum for socially-responsible sourcing is shown to be weaker. Moreover, the UK and European legal frameworks for public procurement, which might be assumed to take care of

labour standards in the interests of the global public good and in the absence of market-driven reputational risk management, have until 2014 been an impediment to, rather than an enabler of, ethical trade. Civil society organizations and multi-stakeholder initiatives with track records in ethical trading developments in consumer goods sectors have recently advocated and supported ethical public procurement, but appear to have less traction in the public sector where both market and regulatory drivers of ethical trade in a neoliberal environment are weak. The paper argues that relatively weak ethical trading initiatives in public procurement, in part shaped by an absence of consumer markets and accompanying pressure, leave a regulatory gap regarding labour standards in supply chains for materials used in the public sector.

Geographers have been influential in theorizing governance and power in global supply chains by developing the Global Production Networks (GPN) framework (Coe et al. 2004; Coe and Yeung 2015), by contributing to the related approach of Global Value Chains (GVCs) (Neilson and Pritchard 2009), and through critical engagement with consumer knowledge of product origins and biographies in cultural research that ‘follows the thing’ (Cook et al. 2017). However, these frameworks and approaches until recently have neglected the state’s supply chains (Horner 2017; Smith 2015). Conceptually our paper draws upon, develops and builds dialogue between these economic and cultural perspectives in order to illuminate the particularities, workings and challenges of state procurement.

The paper concentrates on ethical public procurement concerning labour standards, though we acknowledge a wide range of sustainability initiatives currently influencing the public sector. Keulemans and Van de Walle’s (2017) study of European-wide-public views on state

procurement provides evidence of growing support for environmental and social sustainability. Environmental sustainability has been shown to be dominant and more smoothly incorporated into state procurement, in part because moves towards renewable energy and waste and carbon footprint reduction dovetail more explicitly with cost reduction strategies and also because there is a clear alignment with addressing wider global sustainability challenges (Nijaki and Worrel 2012; Young et al, 2016). Social responsibility has been more commonly associated with strengthening supply links to domestic producers (Keulemans and Van de Walle 2017; Nijaki and Worrel 2012), including initiatives for the local provisioning of school and hospital meals (Morgan and Sonnino 2007). Socially-responsible sourcing from more distant suppliers has been more marginal and is under-researched. We therefore focus on how ethical trading interventions concerning labour standards in global supply chains have influenced UK public procurement. Acknowledging the pivotal role of existing multi-stakeholder initiatives (involving public, private and third sector organizations) for ethical trade, we specifically interrogate the influence of the UK's Ethical Trading Initiative (ETI) and its Base Code of Conduct incorporating nine core International Labour Organization (ILO) conventions.¹ The focus

¹ ETI Base Code clauses are: 1. Employment is freely chosen; 2. Freedom of association and the right to collective bargaining are respected; 3. Working conditions are safe and hygienic; 4. Child labour should not be used; 5. Living wages are paid; 6. Working hours are not excessive; 7. No discrimination is practised; 8. Regular employment is provided; 9. No harsh or inhumane treatment is allowed <https://www.ethicaltrade.org/eti-base-code> (accessed 04/10/17).

throughout is upon the supply chains for materials used in public sector services, rather than on the services themselves, though the latter is also worthy of research, and we attend to the organizational dynamics and implications of the *emergence* of ethical trade in parts of the UK's public sector rather than an analysis of its impacts.

Following the positioning of our research in the social science literature on global supply chains, the paper acknowledges the challenges of implementing social responsibility through such voluntary labour codes in the context of public sector procurement framed by EU and UK law that, until recently, discouraged state purchasers from specifying social criteria in their contract tenders. Drawing on notions of 'responsibilization' from the governmentality literature (Dean 1999; Shamir 2008), and applying practice-based approaches in economic geography (Jones and Murphy 2010), we show how state procurement managers, empowered by organizations like the ETI and shifts in procurement law, navigate the tensions between voluntary labour codes and the rules of procurement law in practice. Moreover, we seek to explain how ethical trade is at the same time significantly compromised in the public sector by the often low profile and intermediate nature of the materials used in public services. Although the state's power of purchase implies that public procurement *could* be, and sometimes is, used for progressive ends (Grandia and Meeham 2017), public services and infrastructure for the most part incorporate many mundane and ordinary materials with relatively low public profile, implying limited reputational risk if those 'things' are ever 'followed' (to paraphrase Cook et al. 2017), and if they are ever found to involve poor labour conditions in their production. To

reveal commonalities in ethical public procurement practice across different government departments, as well as some specific differences, our examples cover the health, higher education, transport and construction (including social housing) sectors, with reference also made to city councils.

In narrating episodes of campaigning and political intervention taking place from the mid-2000s and the subsequent development of ethical procurement in the parts of the public sector researched, we highlight the following four analytical dimensions that contrast with ethical trade for consumer goods: (i) the hidden nature of many materials incorporated into public sector services that limit both the campaigning power of civil society organizations and the significance of reputational risk for state buyers; (ii) alternative (other than consumer-based) drivers of ethical trade associated with notions of public accountability, proactive first-tier suppliers and existing multi-stakeholder initiatives focused on ethical trade; (iii) the influence of institutional context, including the role of procurement law, shaped (at the time of writing) by EU Directives and the Agreement on Government Procurement (GPA) associated with a plurilateral treaty of the World Trade Organization (WTO); and (iv) the practice, influenced by this institutional context, of responsible state procurement through decisions and actions that ride the tensions between reputational and legal risk, and between social responsibility and cost efficiencies.

The paper addresses the development of ethical trading interventions in the UK's public sector, combining interviews with participant observation. A total of 32 interviews were conducted in the UK with both national and regional-level organizations, including meetings between 2011 and 2015 with representatives of: the Ethical Trading Initiative (ETI);

Department for Environment, Food and Rural Affairs (DEFRA); the Department of Health; the British Medical Association (two interviews); three pivotal procurement organizations between them serving National Health Service (NHS) England, NHS Scotland and NHS Wales; an ethical consultancy firm; two campaigning NGOs; Transport for London; Crossrail; procurement departments at twelve universities and one hospital trust; and six large, UK-based, first-tier suppliers of materials to the public sector between them covering construction, equipment and uniforms. A set of these interviews conducted in 2011 and 2012 importantly captures some of the earlier challenges of introducing ethical trade, including the constraints associated with EU procurement law before revisions were made in 2014. However, participant observation and desk-based research have continued to 2017 to incorporate the movement's more recent shifts.

The interviews were supplemented by the lead author's participant observation at the following meetings and events: an Ethical Public Procurement conference organized by the ETI (14/12/10); five meetings of the Medical Fair and Ethical Trade Group hosted by the British Medical Association (BMA) between May 2011 and February 2015; the launch of the Ethical Procurement for Health workbook (16/05/11); an NHS Sustainable Procurement Form meeting (12/09/12); an NHS Scotland Supplier Engagement Day (21/05/13); the Ecoprocure Conference on sustainable procurement in European city councils in Ghent (24th-26th September 2014); a meeting of the European Working Group on European public procurement (13/02/15); and a roundtable of the Scottish Fair Trade Foundation in Glasgow (14/11/16). In addition, one of the co-authors (Morrison) conducted action research through an eight-week placement in the Department for Social Responsibility and Sustainability at a Russell Group University during 2014 and 2015.

The state as buyer: public procurement, governance and social responsibility

Literature on GVCs and GPNs has long focused on questions of governance to locate and understand power and authority in global supply chains, reflecting the frameworks' World Systems Theory and Global Commodity Chain (GCC) theoretical underpinnings (Gereffi et al. 2005; Selwyn 2012; Werner 2016). Most versions of these frameworks prioritize the influence of firms as the key buyers, drivers and co-ordinators of the global economy (Selwyn 2012; Smith 2015). GPN approaches have been more aligned with calls to grasp not only the firm-based logics of governance, but also the significance of non-firm organizations, institutional context and voluntary codes and standards (Nadvi 2008; Neilson and Pritchard 2009). However, with the exception of recent work theorizing the state in GPNs (Horner 2017; Smith 2015), and addressing the influence of regional agreements and trade policy (e.g. Frederick et al. 2015), the role of state regulation in shaping supply chain operations and outcomes and the part played by the state as purchaser in the global economy have been down-played.

Smith (2015) argues for a more thorough theorization of the state in GPNs, bringing GPN approaches into conversation with state theory in order to conceptualize the role played by the state at a variety of spatial scales in driving the accumulation strategies to which GPNs are integral. However, in this account the state's role is consigned to that of regulator or deregulator, which misses its role as an economic actor and purchaser itself. At the same time, the vast majority of studies on buying power in GVCs/GPNs attend to the purchasing influence of high-profile retail and manufacturing corporations, with a related literature on ethical consumption and 'follow the thing' research prioritizing knowledge of consumer

goods and their origins (Barnett et al. 2011; Cook et al. 2017). This attention to consumer goods is justified in the context of a shift to a “consumer dominated economy” over recent decades (Pike 2015, 6). And yet, government procurement also represents a significant part of the global economy. On a global scale, public procurement represents 15-20% of GDP and around EUR 1.3 trillion.² Such government procurement refers to the purchase of goods and services on behalf of a public authority, such as a municipal authority or city council, or regional and national government departments. Our research spans these different scales.

Horner (2017, 4) takes important steps to acknowledge the functioning of the state as buyer in the context of the “variety of roles that states can play within GVCs”—facilitator, regulator, producer and purchaser. With regard to the purchasing role addressed in our paper, government procurement involving the contract tendering process contrasts sharply with lead firm purchasing practices embraced by GVC and GPN literatures. The influence not only of price competition in public procurement (particularly within a context of austerity), but also legislation including the Agreement on Government Procurement and EU and UK procurement law requires empirical research and theorization. In sum, we need to understand how state procurement appears to be uniquely conflicted between value for taxpayers, transparency and responsibility to citizens and communities. It would seem that state purchasing is less likely to be driven by the motivation of excess profit, but shaped very strongly by imperatives of value for money. Longer-term research is required to grasp more fully the relations of surplus extraction and accumulation associated with state procurement and their implications for what Smith (2017) terms global labour governance.

² https://ec.europa.eu/growth/single-market/public-procurement_en (accessed 05/04/18).

The more specific question our paper addresses is how labour standards are managed in the state's supply chains through recent developments in ethical public procurement.

Over the past few years, ethical codes for supply chains have been gradually brought into government procurement policies and have been boosted with the 2014 revision to the EU Procurement Directives, which now more explicitly enable sustainability and social criteria (including labour standards) to influence the contract tendering process. This legal shift, in tandem with the adoption of private ethical standards in the public realm, propelled by civil society advocacy work, now places public sector buyers in positions of greater responsibility in terms of influencing the social and environmental, as well as economic, sustainability of the state's supply chains. There is a pressing need for research to address this particular form of social responsibility, and we argue for an approach that interrogates the practices of ethical public procurement that play such an influential role in interpreting, translating and executing this social responsibility in the state's supply networks. This perspective positions our contribution within "a practice oriented economic geography" (Jones and Murphy 2010, 313), where institutional agency between individuals and "larger-order socio-economic structures" is viewed as pivotal (ibid. 309). The approach is adopted in wider GPN studies (see, for example, Horner and Murphy 2018 and Kleibert 2014). More specifically, we adopt a "governmental approach" to understanding the "fields for intervention" occupied by those influencing state procurement (ibid 304-307).

'Responsibilization' and the challenging practice of ethical public procurement

To theorize ethical trade in the public sector, our practice-based and governmental approach draws on Shamir's (2008) Foucauldian notion of 'responsibilization' to capture the

practice of governance in a neo-liberalizing world of voluntary codes and standards. Framing this conceptualization is recognition that neo-liberalization involves an “economization of the political” (Shamir 2008, 1), whereby the distinction between economy and society is collapsed, a market logic increasingly shapes moral and social questions, including those dealt with by the state (Dahl and Soss 2014), and business assumes increasing responsibility for ‘the social’. In the case of ethical trade in global supply chains, business taking responsibility for ‘the social’ can be seen in the plethora of labour codes and standards adopted by retailers and brand manufacturers with the help of civil society organizations for implementation in their production networks (Hughes et al. 2008). Such codes and standards, as a form of governance, co-exist with governmental authority.

Addressing questions of agency in this context, Shamir (2008, 7) emphasizes the ways in which “...governance—as a modality of power—relies on predisposing social actors to assume responsibility for their actions”. This move is what makes the neoliberal mode of governance practicable, and it does so through a “process of responsabilization” (ibid. 7), where individuals at ground level, influenced by institutional context, assume control and decision-making authority (see also Ormond 2015). It is this emphasis on ethical procurement *in practice* that we take as our main analytical lens on responsible state procurement. However, before we move on to do that, there are two further points made by Shamir (2008) that help to explain the key challenges of ethical procurement specifically in the public sector.

The first issue for ethical public procurement raised by recognition of the “economization of the political” is that “...politics mediated through market-based mechanisms ... are based on

the mobilization of consumers ...” (Shamir 2008, 1). In the sphere of ethical trade, we see this in many cases where it has been critical media attention, consumer groups and civil society organizations prompting brands to develop and more effectively apply labour standards (Hughes et al. 2008). Even if the view is taken that it is intermediaries, such as civil society organizations playing ‘brokering roles’ to lobby and pressure firms on behalf of consumers, it is nonetheless political consumerism that influences this action (Barnett et al. 2011). This agency has been a key focus of cultural-geographical ‘follow the thing’ studies (Cook et al. 2017), which have involved the work of consumers in tracing the origins of the goods they buy and interrogating conditions of production. Yet what if there is no consumer, and no related threat of market loss, in quite the same way? When materials used in public services are goods produced by business for the state, they become integral to public services used by citizens rather than being bought through choice and shaped by consumers’ values and identities. If governance of supply chains is practised through responsibility largely driven by consumer mobilization, this potentially leaves a problem for areas of the state and its materials where consumer influence is peripheral, even where parts of the state are increasingly privatized.

The second and related problem for ethical public procurement raised by the growing responsibility of business for moral and social issues is highlighted by Shamir’s (2008, 14) point that:

“[M]oral considerations emerge as business opportunities subordinat[ing]
socio-moral sensibilities to the calculus of possible outcomes, to the tests

of cost-benefit analysis and to the criteria of reputational-risk management”.

This ‘responsibility as business’ resonates with the business case for ethical trade made by ethical consultancy firms. Moreover, emphasis on corporate responsibility as reputational risk management also connects to the influence of consumers and resonates with broader notions of the role of risk in the political economy and society and the role of audit in managing it (Power 2007). If market logic drives how responsibility works, then how does responsibility play out for state departments, particularly in a context of financial pressure? And where the reputation of state departments is perceived differently to corporate reputation, what does this mean for labour standards that are normally driven by strategies to minimize reputational risk? Does a weakened case for reputational risk mean a correspondingly more ‘diluted’ approach to social responsibility in the state’s supply chains? Where corporate resource for ethical trade typically follows areas of greatest reputational risk and critical media exposure, this would seem to pose a challenge for the ethical trading of materials enrolled in public services, many of which have limited public profile.

The key contribution of the paper, linking to these two problems, is therefore to highlight the challenges for ethical public procurement and its advocates when: 1) social responsibility in supply chains is largely driven by market and consumer-based pressure that is less present in the case of the state; and 2) the national and supra-national legal architecture for regulating government sourcing is also founded on an economic logic of competition that insufficiently serves in the interests of social justice including overseas labour standards.

Ethical interventions in UK public sector procurement: Social responsibility with a difference?

Intermediate materials in public services and the challenges for labour rights campaigners: the problem of 'hidden' supply chains

Interviewees across the different procurement and civil society groups involved in our research acknowledged that the public sector in the UK is significantly less advanced in developing ethical trading programmes in comparison with the private sector. A workwear supplier to both public and private sector clients suggested that, “public procurement people ... are twenty years behind” (Interview with Product Development Director, Supplier A, 02/11/11). A representative of the ETI associates this relative lag with differences in reputational risk linked to market-based pressure between public and private sector buyers:

“The commercial companies who are always sensitive to any whiff of something that might harm their business reputation tend to be a lot more thoughtful in how they run their ethical trade programme. The ones that are more aligned to the public sector are not particularly” (Interview, 20/09/11).

As the Technical Manager for Supplier D reflects, “We are not under the same scrutiny as the big retailers are. They are getting hammered by exposés” (Interview, 18/10/11). The Senior Research Officer of the BMA echoed this view, acknowledging that “... in the private sector, unfortunately, it does seem to have been negative publicity that is the most effective trigger for change” (Interview, 18/07/11). One of NHS Supply Chain’s (a private firm contracted to supply materials to the NHS) procurement managers referred to a history of

push-back from top-level management when it comes to developing social responsibility in its supply chains for a wide range of materials, “because customers [clients such as Hospital Trusts] aren’t asking for it” (Interview, 29/06/11).

One of the reasons for the notable absence of public, media and client pressure on public sector procurement to introduce labour codes into their supply chain management appears to be the inconspicuous and sometimes intermediate nature of materials used in public services. Intermediate goods are those used to make up a final product or service, so are not limited of course to public sector sourcing. A policy team member for Campaigning NGO B referred to “what is in effect a hidden supply chain” (Interview, 25/10/11), while the Project Leader for Sustainable Procurement at Supplier E spoke about how the chances of a supplier to the public sector being targeted on the subject of labour issues are connected to their products’ visibility and public profile:

“The first question to start with is the visibility and the likelihood of coming unstuck. It is less likely than in a B2C [Business-to-Consumer] public facing business and I guess it’s more likely when we work for high-profile projects such as the Olympics [and] potentially Crossrail. And then it would tend to be probably a material or product that is very visible or immediately apparent to the general public rather than a mechanical component that is buried inside a building somewhere” (Interview, 21/05/12).

Interviewees highlighted various examples of ‘buried’ or ‘hidden’ materials used in public services and the resulting lack of any public, civil society or media pressure to adopt labour

standards in their procurement. In the healthcare and social housing sectors, for example, interviewees reflected on the lack of public and even procurement managers' knowledge of the product origins and sourcing ethics of nurses' uniforms in comparison with public understandings of fashion garment production in South and Southeast Asia (Interviews with Group Procurement Director of Supplier C, 01/11/11 and the Head of Contracting for NHS Wales Procurement Services, 15/11/11). And yet, uniforms and workwear are also produced predominantly in the same regions of low cost labour (Ruwanpura and Hughes 2016). Similar observations were made about intermediate goods such as public building materials (Interview with Procurement Operations Manager, Crossrail, 24/01/12), and components for MRI scanners (Interview with Head of Sustainable Procurement, Department of Health, 26/09/11). A quote from the Responsible Procurement Manager for Transport for London is particularly illuminating on the interrelated lack of knowledge, reputational risk associated with labour issues and ethical trade interventions, using the example of road signs:

“My big supplier, my first [UK-based] supplier, didn't know where their road signs were coming from. I said, 'I think we should look at this'. So they found out they were coming from China and all they'd ever done was just bought road signs from someone who supplied them on time and to specification and that was it, so they've got their wholesaler in the UK or their eventual retailers, so it goes down a really long supply chain and no one has ever bothered to investigate because they have never had any reason to ... [T]hen they came to me and said, 'Why are we doing this?'. I said, 'Well I want to see what's out there and if there is a risk'. They said, 'Well the risk is theoretical because has

anyone ever been subjected to a press campaign for road signs? – No’’

(Interview, 3/10/11).

A lack of demand for *socially*-responsible procurement on the part of the public sector also sits in a context where environmental responsibility is heavily prioritized; a situation acknowledged by the majority of interviewees. The Group Procurement Director for Supplier C reflects on the relative attention paid to environmental and social issues:

“I’ve never had a [social housing] client sit in front of me and ask whether I know the history of the manufacture of the product that I am suggesting they should use. They’ve all asked me about environmental issues regarding the product, warranties, price, sustainability, all of those questions come up, but nobody has ever said to me, ‘Do you know who assembles it and where?’ ... I’m sure it will be a disaster that makes something change ... I just don’t think it’s obvious that the materials we buy [for social housing] have the potential to harm people in their manufacture. If it were, then we would be doing more than we are doing right now to try and protect ourselves and those people” (Interview, 01/11/11).

Connected to the hidden nature of goods used in the delivery of public services is the lack of public profile and, linked to market-based notions of risk, brand identity associated with the companies supplying them. Many of these companies, categorized as Business-to-Business (B2B) rather than Business-to-Consumer (B2C), do not therefore have as significant a risk to their corporate reputations. This point is made by the Head of Sustainable Procurement for the Department of Health:

“For healthcare suppliers ... a lot of brand names are not household names. So if, say, Covidien, fell foul on child labour in its supply chain and if that went on the front cover of the paper everyone would say, ‘Who the hell’s Covidien?’”

(Interview, 26/09/11).

This reinforces the case that in a neoliberal economy regulated by private-interest standards, resource for social responsibility around labour conditions tends to follow areas of greatest reputational risk and highest public profile. In the realm of corporate sourcing of consumer goods, ethical trade tends to be most advanced for products most strongly connected to consumer tastes and identity, such as food and fashion items, which are also purchased predominantly through buyer-driven supply chains where market strength is linked to high profile brands (Gereffi et al 2005; Hughes et al 2008). Ethical trade has arguably less traction in producer-driven sectors, such as pharmaceuticals, where consumer mobilization around manufacturers’ ethical reputations is weaker, though more research is needed to explore this. In all sectors and for all materials, it is frequently a market logic (and response to the threat of market loss) driving ethical trade, but for B2B companies and for materials procured through more producer-driven chains involving brands less well-known to consumers, reputational risk management as a driver of social responsibility is weaker. Whatever the materials concerned, whether they are garments influenced by ethical trading programmes in the retail sector, or road signs with little history of socially-responsible sourcing, if they are purchased by government departments, they are distanced from public scrutiny in terms of their origins and social relations of production. This raises the question of what motivates social responsibility in these hidden supply chains.

Drivers of ethical public procurement: Accountability to taxpayers, business-to-business initiatives and multi-stakeholder organizations

Our interviews reveal that although lagging behind the consumer goods sector in terms of the sophistication of ethical trading programmes, the UK's public sector has nonetheless witnessed the introduction of labour codes of conduct into its procurement strategies and systems. Here we highlight some of the drivers of initiatives, explaining how the challenges experienced by their proponents are embedded in the political-economic position of public sector procurement and the aforementioned hidden nature of the materials. First, in the absence of the possibility for political consumerism to exert significant influence on ethical public procurement, accountability to taxpayers and a duty of care to workers are noted as potential (though often weak) drivers of social responsibility (Interview with Business Development Manager and Procurement Manager, Supplier B, 10/10/11). Second, the B2B suppliers of materials to the public sector can in some cases act as levers for change, most often because some of these firms also supply the consumer goods sector (e.g. suppliers of workwear to both state departments and retailers) (Interview with Product Development Director, Supplier A, 02/11/11). Ethical sourcing of apparel worn by public sector workers therefore tends to be more advanced than it is in the sourcing of other public sector materials with less connection to consumer-driven ethical trade, such as pharmaceuticals, building materials and surgical instruments. Another reason for B2B suppliers being proactive in initiating socially-responsible sourcing is if the parent companies of these firms are in countries where state commitment to labour standards is firmer (e.g. in the case of firms with headquarters in Northern European, social democratic political economies) (Interview, Project Leader, Sustainable Procurement, 21/05/12). Such cases demonstrate

that the embeddedness of a GPN in particular institutional contexts matters in terms of the ethical values circulating through its operations (Neilson and Pritchard 2009). And third, instances where the public sector and its suppliers become enrolled in high profile events, such as the 2012 Olympics in London, create the kinds of reputational risk that serve to propel social responsibility and ethical trading programmes for supply chains hitherto less conspicuous (Interview, Director of ethical trade consultancy firm, 11/10/11).

In cases where ethical campaigning has been rolled out and where media stories have been broadcast, these have been deliberate attempts on the part of professional bodies, civil society and multi-stakeholder organizations to render visible the supply chain biographies of some of the intermediate, inconspicuous and mundane goods used in public services and infrastructure. The University and health sectors in our research have received most attention in this respect. This has come in the apparent absence of any significant source of discontent and action on the part of state procurement management itself. In the UK Higher Education sector, the main NGO campaigns placing supply chain responsibility on university procurement agendas have been run by People and Planet, and have addressed social and environmental issues in the sourcing of textiles and electronics (Interview, Campaigns and Communications Manager, People and Planet, 02/11/11). As a result, the NGO has encouraged universities to sign up to the US-based Worker Rights Consortium (WRC) (participant observation, 2015), discussed in the next section of the paper.

In the health sector, aside from the ethical campaigns centred on more localized procurement (e.g. of food) (Interview, Head of Catering at a University Hospital, 13/02/2012), the drivers of labour standards improvements in global supply chains stem

from an NGO campaign in Sweden. This took the form of a 2007 report by the NGO, Swedwatch, entitled *The Dark Side of Healthcare* and focusing on labour standards in the overseas production of surgical instruments and textiles. The report influenced UK advocacy work on improving labour standards in the NHS's supply chains (Bhutta 2006), which led to the establishment of the British Medical Association's (BMA's) Medical Fair and Ethical Trade Group in 2007. In terms of UK media exposés and campaigning, the Founder of that group explains that surgical instruments remain a focus because they "have always been emotive" (Interview, 01/11/11), suggesting in part that to capture the attention and imagination of healthcare practitioners, procurers and the public, emotional connection can be made to people's bodies, identities and wellbeing. This continues to be a focus of the group's lobbying work and collaborative projects with healthcare suppliers (participant observation, 16/05/11; 25/01/12; 06/06/14; 13/02/15). An attempt was also made in 2011 to reach the public on these issues via a BBC Panorama documentary. However, an intended focus on labour standards in Pakistan for surgical instruments was replaced by emphasis on the implications of overseas and low cost production for the quality of instruments and UK patient safety, viewed by the film-makers to be of greater public concern than labour standards. Even where emotive issues are present and advocacy efforts are made by campaigners, reputational risk is more challenging to exploit in a public sector where the services of government departments are rarely viewed by the public as being dependent on global labour, and when the priorities of state responsibility are not seen to extend to improving working conditions of distant labourers.

The paradox of implementing voluntary ethical codes in a landscape of procurement law: institutional influence with a contradictory twist

In this section we show how ethical trading developments have evolved in the health, higher education, construction and transport sectors of the UK in ways that involve not only the kinds of voluntary initiatives and labour codes emblematic of supply chain governance and risk management in a neo-liberalizing economy, but also tools to navigate strict rules associated with procurement law. With state regulation assuming an obvious significance for public sector procurement, we foreground the architecture of procurement law that sets strict rules and procedures for public procurement managers regarding the initiation, content and management of contracts with suppliers. This is not to ignore the wider significance of international trade agreements, not least in the rapidly changing context of the UK's withdrawal from the EU. However, the paper focuses more specifically on the role of national and supra-national procurement law in terms of how it shapes the contract tendering process and, in particular, the incorporation of social responsibility and labour standards within it.

In contrast to retailers' and brand manufacturers' flexible processes for enrolling suppliers into their systems of provision (Gereffi et al. 2005), public sector procurement teams follow a strict set of procedures in the contract tendering process. These procedures apply to all parts of the public sector, whether they cover defence, health, transport, housing or education, though the size of the contract can affect some of the steps involved. The process involves: (i) the development of the tender, supplier requirements and construction of the evaluation criteria; (ii) in some cases, a pre-qualification questionnaire for suppliers as part of a sifting process; (iii) the issuing and implementation of the tender; (iv) evaluation and supplier selection; (v) negotiation of the contract; and (vi) the award of the contract to

the successful supplier, and subsequent management and monitoring.³ Supplying goods, materials and services to the public sector in the UK typically involves contracts of some three years (Interview, Head of Membership Services, ETI, 20/09/11). Whilst on the face of it these procedures and the relative stability of a three-year contract would seem to present foundations for building social responsibility and expectations concerning labour standards into the supply relationships, this has been far from straightforward, at least until 2014, due to clauses and interpretations of procurement law.

At the time of writing, UK public sector procurement is bound by laws framed by European Union (EU) Public Procurement Directives, which in turn derive from the World Trade Organization's (WTO's) General Procurement Agreement (GPA), all underpinned by a shift from the principles of protectionism to those of the market (Fisher and Sheppard 2013). The market-based logic of a level competitive playing field characterizes procurement law when it comes to contract tendering. Rules about equity and transparency in that regard somewhat paradoxically have created barriers to social responsibility in public procurement. Value for money, in particular since the 2008 financial crisis, has also been dominant in shaping supplier selection criteria. Prior to the 2014 revision of EU Procurement Directives, the 2004 Directives (e.g. Directive 2004/18/EC) made it problematic to specify aspects of the production process in contract award and selection criteria. Ethical trade involving voluntary codes of labour conduct, such as Fairtrade, is viewed as "a social consideration in public procurement" (Fisher and Sheppard 2013, 36), and is therefore counted as a technical part of the production *process* rather than part of the product itself and its functions. Given this,

³ <http://www.zemaitis-uk.com/tender-procurement-process/>(accessed 10/11/17).

the 2004 EU Procurement Directive (written into the UK Public Contract Regulations 2006) neither permitted public sector procurement managers to specify social considerations in the evaluation criteria for tenders, nor allowed the selection of a supplier on that basis. Ethical trade and labour standards were simply not viewed as integral to the product. This effectively rendered the implementation of social responsibility and Fairtrade, as well as other aspects of ethicality such as localized procurement (Morgan and Sonnino 2007), a legal risk for public procurement managers; a point picked up by the majority of our interviewees.

For Fisher and Sheppard (2013, 34) writing about the incorporation of Fairtrade into European public procurement, this means that social responsibility in supply chains “... becomes[s] dominated by a legal discourse, with the moral charge transformed into a language of the risk of litigation”. A Policy Team Member at the Fairtrade Foundation reflected on the “restrictive” nature of those 2004 EU Directives when it came to Fairtrade products being purchased by the public sector (Interview, 25/10/11). While some interviewees explain that it has been possible to work around the Directives to ensure that labour standards are a part of suppliers’ performance expectations, others suggest that risk aversion on the part of public procurement management has made this difficult (Interview with the Campaigns and Communications Manager, People and Planet, 02/11/11). Morgan and Sonnino (2007), for example, discuss how this legal risk has been navigated effectively in the case of local food procurement for school meals in the UK and in Italy. While some commentators flag the potential for public sector procurement to achieve various goals associated with environmental sustainability and social responsibility in supply chains

(Amann et al. 2014; Morgan and Sonnino 2007), the pre-2014 Directives made that more challenging and rendered it a legal risk.

The 2014 revisions to the EU Procurement Directives resulted, in part, from sustained lobbying by organizations including the Fairtrade Foundation (Interview with Policy Team Member, Fairtrade Foundation, 25/10/11). They are implemented through the UK Public Contracts Regulations 2015 (with the exception of defence and security, which are subject to a different set of regulations, and contracts below particular threshold values for different sectors), and they make explicit the possibility of incorporating social considerations (including ethical trade and labour standards) into contract tendering. Revisions to Articles 42 and 67(3), for example, now state that in the technical specifications and award criteria of a contract, respectively, “characteristics may also refer to the specific processor method of production ... *even where such factors do not form part of their material substance*” (Weller 2014). In addition, Recital 74 refers to sustainability objectives as well as those connected to competition. Article 43(1) also permits reference to certain labels in the technical specifications of contract award criteria as performance conditions as “means of proof that the works, services or supplies correspond to the required characteristics ...” opening up the possibility for standards, such as Fairtrade, to be specified (Weller 2014). In terms of the implications of Brexit, EU Directives are embedded in UK Public Contracts Regulations meaning that although the longer-term future is uncertain, current public procurement law will remain in the form of these UK regulations, though with an expected and problematic reduction in the influence of EU case law and recitals (Moorcroft 2017).

Initiatives for promoting and developing ethical trade in public sector procurement are therefore set up in ways that are sensitive to procurement law and systems of contract tendering. Such initiatives have evolved out of the aforementioned civil society campaigns (as the key levers for change) over the past few years to encourage ethical procurement in UK health, higher education, construction and transport sectors. Illustrating the significant influence of existing organizations with track records in ethical trade in the consumer goods sector, the ETI, as the multi-stakeholder organization sitting at the heart of the ethical trading movement in the UK since 1997 (Hughes et al. 2008), plays a key role in facilitating developments in ethical public procurement. A similar influence has been present since 2010 in the USA with the Sweatfree Purchasing Consortium,⁴ since 2007 in Norway through the Norwegian Ethical Trading Initiative (IEH)⁵ and in Sweden with the Swedwatch-inspired Swedish County Council Network on Sustainable Procurement (OSCE 2016).

The ETI's Base Code of Conduct has been taken up across sectors, from the Ethical Procurement for Health workbook to Transport for London and Crossrail's ethical trading working group. Moreover, some of the largest materials and service providers to the public sector are ETI members, for example safety workwear supplier, Arco, workwear supplier Dimensions, Natural Stone and London Underground. The ETI also hosts an ethical public procurement working group, runs training courses specifically for public sector procurement managers and has provided support for more targeted, sector-specific groups (Interview, Head of Membership Services, ETI, 20/09/11). Taking Shamir's (2008) perspective, these are

⁴ <http://www.buysweatfree.org/about> (accessed 08/04/18).

⁵ http://www.etiskhandel.no/English/public_procurement/index.html (accessed 08/04/18).

all means, along with revisions to the Directives, through which procurement managers become responsibilized (empowered to intervene and act in ways shaped by these organizations and laws—neither duped on the one hand, nor given autonomy on the other).

In terms of the ETI's role in supporting ethical public procurement initiatives in specific sectors, it played a significant part along with the Medical Fair and Ethical Trade Group in creating a platform for launching the Ethical Procurement for Health workbook in May 2011 (participant observation, Ethical Procurement for Health Launch 16th May 2011). In the UK Higher Education sector, the ETI is influential predominantly through its work with three key suppliers who are ETI members and part of the national purchasing consortia's personal protective equipment (PPE) framework, through which a significant volume of garments and textiles are procured by UK universities and colleges. Alexandra plc, Arco Limited and E&E Workwear have adopted the ETI Base Code. This supports the view that ethical public procurement tends to have more traction in sectors like apparel where there is already a strong ethical trading movement. In contrast to other parts of the public sector, however, ETI has not been the multi-stakeholder organization at the centre of ethical trading development in higher education. Largely due to People and Planet's campaigning steer, the US-based Workers' Rights Consortium (WRC) has played this role. WRC has its roots in the 1990s US campus protests concerning labour standards in colleges' garment supply chains and, unlike ETI, incorporates supply chain disclosure and monitoring into its remit (Hughes et al. 2008). As a direct result of People and Planet's campaigning, fifteen UK higher education initiatives are affiliated to WRC,⁶ along with the National Union of Student

⁶ <http://www.workersrights.org/about/as.asp> (accessed 22/05/17).

Services Limited (participant observation, 2015). It is significant that WRC and campus protests played a key part in galvanizing the anti-sweatshop movement in its early days, though the University influence appeared to be specific to the US context and tied to strong collegiate identities and brand names such as Nike.

In UK public sector construction and transport infrastructure projects, ETI is influential in terms of key suppliers becoming members and adopting its Base Code (e.g. London Underground) and by hosting working groups and training programmes to support the sectors' procurement managers. For example, Transport for London is an ETI member and has influenced, as a key client, Crossrail's ethical sourcing strategy (Interview, Responsible Procurement Director, Crossrail, 24/01/12). And in construction, there is now a new Ethical Labour Sourcing standard that sits as part of the BRE Environmental and Sustainability Standard BES 6001: Issue 1,⁷ drawing on a range of ISO standards and the ILO conventions common to ETI's Base Code (Interview, Certification Schemes Manager, BRE Global, 29/05/12).

Across these different cases, and despite some contrasts in terms of campaigning traction, a general tendency is that multi-stakeholder initiatives and working groups effectively provide public sector departments with the labour codes they can specify in their contract award criteria, and with guidance they can draw upon in the management of the contracts. In other words, they serve as institutional frameworks for procurement directors and

⁷ (<http://www.greenbooklive.com/filelibrary/ELS/BES-6002-Ethical-Labour-Sourcing-Standard.pdf>, accessed 22/05/17)

managers to implement voluntary labour standards in the context of complex bureaucratic and purchasing structures and procurement law. These labour standards specified in contracts as part of the award and performance criteria apply to contractors *and* their suppliers further up the chain.

Practising ethical public procurement: Responsibilization and risk management through the contract tendering process

Drawing on Shamir (2008), we finally embrace the ways in which governance more broadly, and ethical public procurement specifically, operates in practice through the decisions and actions of ‘responsibilized’ individuals working in different state departments. We recognize that it is through these decisions and actions executed in the contract tendering process that the tensions between voluntary labour codes and procurement law, and between legal and reputational risk, are worked through. Significant decision-making power resides with directors and heads of procurement across a diverse set of public sector departments, as well as with those responsible in first-tier supplying firms. As the Group Procurement Director for Supplier C reflects, “I get the trickier procurement questions sent to me, and now I get the ethical-style questions sent to me” (Interview, 26/09/11). Within different parts of the public sector, decisions and strategies regarding procurement are then organized through various bureaucratic layers, including whether and how to stipulate labour codes in contract suppliers’ award criteria and, if they do, which codes to adopt and how to implement and monitor them in the performance of the contract. Returning to the influence of procurement law, there are decisions to make from the outset about whether or not ethical public procurement involving labour standards is possible (Interview with Director of Ethical Trading Consultancy Firm, 11/10/11).

Legal advisors are very commonly brought in to help procurement departments and managers navigate arguments about the fairness and legality of ethical public procurement. The role of lawyers in executing this part of responsible procurement is illustrated by the case of a particular regional health authority in the NHS which, prior to the 2014 revisions to EU Procurement Law, was making a relatively early move to implement ethical trade in the sourcing of its nurses' uniforms following campaigning focused on labour issues in supply chains for healthcare materials. As their Head of Procurement reflected, "[W]e scratched our heads a bit and took legal advice from our lawyers in terms of what we could and couldn't do". The Head of Sustainable Procurement for the Department of Health explained how that authority effectively pioneered a case for ethical trade based on the notion of a potential risk to its reputation if they did not stipulate minimum ETI-style labour standards in their contract performance criteria (Interview, 26/09/11). The legal architecture is common to all areas of the public sector, but the point about responsabilization illustrated by this case is that the risk has to be navigated in practice through particular procurement structures and is shaped by advocacy work and other influences specific to certain materials. A manager at NHS Supply Chain reinforced this legal challenge, in particular prior to the 2014 revisions to the EU Directives, of "constantly having to try and find different ways of approaching things", acknowledging that they had encountered "a lot of legal knock-backs" (Interview, 29/06/11). This demonstrates Fisher and Shepard's (2013) argument about the dominance of legal discourse in ethical public procurement. A perspective of responsabilization acknowledges the internalization and problematization of this discourse by procurement managers and their advisors in making ethical interventions.

Ethical trade as risk management in public sector sourcing therefore contrasts markedly with ethical trading of consumer goods through the practice of managing interwoven reputational *and* legal risks, and where reputational risk is significantly weaker than it is in the branded consumer goods sector. Additionally, the tools for managing those risks in the implementation of labour standards tend to differ. While retailers and brand manufacturers commission selected third-party audits of 'higher risk' producers (in terms of labour issues), as well as buying into shared online monitoring systems such as Supplier Ethical Data Exchange (SEDEX), the public sector has more limited funding available (because overseas labour standards are not a priority) for such extensive programmes in the monitoring of their contracts with suppliers. Whilst some suppliers, in particular in the garment sector, who produce both for the private and public sectors, use systems like SEDEX (Interview, Product Development Director, Supplier A, 02/11/11), less resource-intensive balanced scorecards and online databases tend to be more commonly used by public procurement managers and first-tier suppliers' ethical trading managers (Interview, Procurement Manager, Supplier B, 10/10/11).

The need to navigate legal risk has remained since the 2014 revision to the EU Directives, and this process of navigation operates simultaneously through the management of cost-based pressures. This was demonstrated by the 2014 Ecoprocura conference held in Ghent, Belgium, for local government procurement managers across Europe (participant observation, 24/09/14 to 26/09/14). Key themes of that conference included the management of cost efficiencies in sustainable procurement and the implications of the revised European Public Procurement Directives for sustainable and innovative local government procurement. A plenary session included presentations on the Directives by

lawyers and representatives of the European Commission, while sub-plenary and parallel sessions enabled discussion of best practice solutions to implementing sustainable purchasing within these new rules.

Participant observation by the lead author at a roundtable meeting of the Scottish Fair Trade Foundation in Glasgow (14th November 2016) also revealed how different procurement departments are now negotiating the 2014 Procurement Directives, including their translation into UK and also Scottish procurement law (the latter through The Scottish Procurement Reform Act 2014 and Procurement (Scotland) Regulations 2016). The roundtable meeting acknowledged that the new EU Directives allow greater room for including social responsibility into the contract tendering process. What the discussion with procurement managers problematized was exactly how best to do this, which codes to specify and how most effectively to monitor the performance (on social responsibility measures) of suppliers. The developmental approach of the ETI, whereby suppliers are encouraged to improve on labour standards rather than being penalized for labour code violations, was generally preferred in discussion and illustrates the ongoing influence of the ETI. What continues, though, is an ethical public procurement landscape that is less well developed and less well-resourced than ethical trading programmes operated by brand name retailers and manufacturers in the consumer goods sector.

Conclusion

This paper has argued for the importance of evaluating the relatively recent introduction of ethical trading programmes concerning labour standards into the realm of public sector procurement. It has done so by focusing on the context of the UK, with particular reference

to ethical public procurement in the NHS, higher education, construction and transport (the latter focused on London), as well as wider examples where appropriate. In part, this is an exercise in evaluating and theorizing the particularities of state procurement and its associated ethical trading challenges against the backdrop of a geographical and wider social science literature that has prioritized the governance and outcomes of global supply chains in consumer goods sectors. In terms of its contribution to geographical perspectives on global supply chains, the paper develops recent calls for understanding state roles in GPNs (Horner 2017; Smith 2015). In recognizing the state's role as purchaser, in particular, the paper demonstrates the need for GVC and GPN frameworks to incorporate intermediate goods and the influence of the legal realm in the theorization of supply chain governance. The paper advances this contribution to the literature on GVCs and GPNs through two cultural-economic moves. First, cultural geographies of 'follow the thing' reveal the significance of public, state and corporate knowledge of product origins and biographies to the drivers (or absence thereof) of more responsible state procurement. And second, practice-based and governmental approaches to economic geography embrace the ways in which responsibilized procurement managers navigate the landscape of reputational and legal risk in the execution of ethical public procurement and social responsibility (Jones and Murphy 2010).

Through the aforementioned approach, the paper grasps how social responsibility (and, by extension, social justice) is specifically articulated in vast webs of supply chains provisioning the state that are characterized by different forms of governance than in consumer goods sectors. The paper highlights two inter-related challenges for the emergence and development of ethical public procurement in the UK. First is the low profile and hidden

nature of so many of the materials used in public services, which provides less impetus for the public to trace their origins and biographies (see Cook et al. 2017), and which means limited traction for civil society groups aiming to generate public campaigns on labour standards. This supports existing understanding of the consumer- and market-driven character of ethical trade more broadly. Connected to this is the limited reputational risk labour rights issues appear to present both to the government departments sourcing these low-profile materials and to the first-tier suppliers who often have company names not widely known in the public sphere. Given that resource for ethical trade tends to follow areas of greatest organizational and market-based risk, this places limits on the key drivers of ethical trading progress. The second challenge concerns the significant role of procurement law in governing the contract tendering process. We have highlighted, in particular, how the constraints imposed by EU and UK procurement law on social responsibility in the state's supply chains have loosened since the 2014 revisions to the Directives, and it will be important for future research to capture the implications of Brexit for the evolution of this branch of law and its practical application. In the absence of market-based drivers of ethical trade, and acknowledging the limitations of neo-liberal ethical trading solutions to global labour rights issues based on voluntary codes and audits (Neilson and Pritchard 2009), the most effective routes to improving labour standards in the public sector's supply chains are likely to follow from the more effective incorporation of ethical issues into procurement law and its implementation in sourcing practice.

Broadening the paper's conclusions, there are two further points worth making. First, there is a clear need to conduct research on the implications of these ethical public procurement challenges for producers and workers, as well as for the wider geographies of labour

governance in the state's supply chains (Smith 2017). And second, further explanation might be required for a lack of public pressure on the state to practice greater social responsibility in the sourcing of materials used in public services. As well as the low profile of these materials and acknowledgement of financial pressure on government departments, there is also the possibility of a public assumption and expectation that labour regulation in supply chains for the public sector is already in place. In other words, there might be limited understanding of what the "economization of the political" means for the state's vast supply chains and the fortunes of workers worldwide whose livelihoods are tied into them (Shamir 2008, 1). As one of the project's interviewees quoted earlier in the paper lamented, "I'm sure it will be a disaster that makes something change." This has proven to be the case for the health and safety implications of public construction projects and building materials highlighted by the very high-profile fire in Grenfell Tower, London, on 14th June 2017. As the case of the Rana Plaza garment factory collapse in Bangladesh on 24th April 2013 also shows, the health, safety and livelihoods of 'distant' workers enrolled in public sector projects and services are also at stake. There is an important role for social science, including geographical, research to understand the complexities of governance and responsibility that underpin the public sector sourcing of these materials in neoliberal environments.

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